

Employment and Training Administration, Labor

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means normally assuring next day delivery, including electronic mail, and a copy, if applicable, to the employer's attorney or agent. The Final Determination letter will:

(a) State the reason(s) certification is denied, citing the relevant regulatory standards;

(b) Offer the employer an opportunity to request administrative review of the denial under § 655.61; and

(c) State that if the employer does not request administrative review in accordance with § 655.61, the denial is final and the Department of Labor will not accept any appeal on that *Application for Temporary Employment Certification*.

§ 655.54 Partial certification.

The CO may issue a partial certification, reducing either the period of need or the number of H-2B workers or both for certification, based upon information the CO receives during the course of processing the *Application for Temporary Employment Certification*. The number of workers certified will be reduced by one for each U.S. worker who is qualified and who will be available at the time and place needed to perform the services or labor and who has not been rejected for lawful job-related reasons. If a partial labor certification is issued, the CO will amend the *Application for Temporary Employment Certification* and then return it to the employer with a Final Determination letter, with a copy to the employer's attorney or agent, if applicable. The Final Determination letter will:

(a) State the reason(s) why either the period of need and/or the number of H-2B workers requested has been reduced, citing the relevant regulatory standards;

(b) If applicable, address the availability of U.S. workers in the occupation;

(c) Offer the employer an opportunity to request administrative review of the partial certification under § 655.61; and

(d) State that if the employer does not request administrative review in accordance with § 655.61, the partial certification is final and the Department of Labor will not accept any appeal on that *Application for Temporary Employment Certification*.

§ 655.55 Validity of temporary labor certification.

(a) *Validity period*. A temporary labor certification is valid only for the period as approved on the *Application for Temporary Employment Certification*. The certification expires on the last day of authorized employment.

(b) *Scope of validity*. A temporary labor certification is valid only for the number of H-2B positions, the area of intended employment, the job classification and specific services or labor to be performed, and the employer specified on the approved *Application for Temporary Employment Certification*, including any approved modifications. The temporary labor certification may not be transferred from one employer to another unless the employer to which it is transferred is a successor in interest to the employer to which it was issued.

§ 655.56 Document retention requirements of H-2B employers.

(a) *Entities required to retain documents*. All employers filing an *Application for Temporary Employment Certification* requesting H-2B workers are required to retain the documents and records proving compliance with 29 CFR part 503 and this subpart, including but not limited to those specified in paragraph (c) of this section.

(b) *Period of required retention*. The employer must retain records and documents for 3 years from the date of certification of the *Application for Temporary Employment Certification*, or from the date of adjudication if the *Application for Temporary Employment Certification* is denied, or 3 years from the day the Department of Labor receives the letter of withdrawal provided in accordance with § 655.62. For the purposes of this section, records and documents required to be retained in connection with an *H-2B Registration* must be retained in connection with all of the *Applications for Temporary Employment Certification* that are supported by it.

(c) *Documents and records to be retained by all employer applicants*. All employers filing an *H-2B Registration* and an *Application for Temporary Employment Certification* must retain the following documents and records and must provide the documents and

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records to the Department of Labor and other Federal agencies in the event of an audit or investigation:

(1) Documents and records not previously submitted during the registration process that substantiate temporary need;

(2) Proof of recruitment efforts, as applicable, including:

(i) Job order placement as specified in § 655.16;

(ii) Advertising as specified in §§ 655.41 and 655.42;

(iii) Contact with former U.S. workers as specified in § 655.43;

(iv) Contact with bargaining representative(s), or a copy of the posting of the job opportunity, if applicable, as specified in § 655.45(a) or (b); and

(v) Additional employer-conducted recruitment efforts as specified in § 655.46;

(3) Substantiation of the information submitted in the recruitment report prepared in accordance with § 655.48, such as evidence of nonapplicability of contact with former workers as specified in § 655.43;

(4) The final recruitment report and any supporting resumes and contact information as specified in § 655.48;

(5) Records of each worker's earnings, hours offered and worked, location(s) of work performed, and other information as specified in § 655.20(i);

(6) If appropriate, records of reimbursement of transportation and subsistence costs incurred by the workers, as specified in § 655.20(j).

(7) Evidence of contact with U.S. workers who applied for the job opportunity in the *Application for Temporary Employment Certification*, including documents demonstrating that any rejections of U.S. workers were for lawful, job-related reasons, as specified in § 655.20(r);

(8) Evidence of contact with any former U.S. worker in the occupation at the place of employment in the *Application for Temporary Employment Certification*, including documents demonstrating that the U.S. worker had been offered the job opportunity in the *Application for Temporary Employment Certification*, as specified in § 655.20(w), and that the U.S. worker either refused the job opportunity or was rejected

only for lawful, job-related reasons, as specified in § 655.20(r);

(9) The written contracts with agents or recruiters as specified in §§ 655.8 and 655.9, and the list of the identities and locations of persons hired by or working for the agent or recruiter and these entities' agents or employees, as specified in § 655.9;

(10) Written notice provided to and informing OFLC that an H-2B worker or worker in corresponding employment has separated from employment before the end date of employment specified in the *Application for Temporary Employment Certification*, as specified in § 655.20(y);

(11) The *H-2B Registration*, job order and a copy of the *Application for Temporary Employment Certification* and the original signed Appendix B of the Application. If the *Application for Temporary Employment Certification* and *H-2B Registration* is electronically filed, a printed copy of each adjudicated *Application for Temporary Employment Certification*, including any modifications, amendments or extensions must be signed by the employer as directed by the CO and retained;

(12) The *H-2B Petition*, including all accompanying documents; and

(13) Any collective bargaining agreement(s), individual employment contract(s), or payroll records from the previous year necessary to substantiate any claim that certain incumbent workers are not included in corresponding employment, as specified in § 655.5.

(d) *Availability of documents for enforcement purposes.* An employer must make available to the Administrator, WHD within 72 hours following a request by the WHD the documents and records required under 29 CFR part 503 and this section so that the Administrator, WHD may copy, transcribe, or inspect them.

§ 655.57 Request for determination based on nonavailability of U.S. workers.

(a) *Standards for requests.* If a temporary labor certification has been partially granted or denied, based on the CO's determination that qualified U.S. workers are available, and, on or after 21 calendar days before the date of